

# **INTERNAL OPERATING PRACTICES AND PROCEDURES FOR THE FOURTH APPELLATE DISTRICT, DIVISION ONE**

(Revised February 15, 2010.)

## **I. INTRODUCTION**

### **A. The Court**

The Court of Appeal for the Fourth Appellate District consists of three divisions. Division One, which generally hears appeals in cases from San Diego and Imperial Counties, is located in San Diego. Divisions Two, which generally hears appeals in cases from Riverside, San Bernardino and Inyo Counties, and Three, which generally hears appeals in cases from Orange County, are located in Riverside and Santa Ana, respectively. Cases filed in one division may be transferred to another division to equalize the workload of the three courts. This document describes the internal operating practices and procedures of Division One for review of appeals and original proceedings.

### **B. Professional Staff**

Division One has ten justices, one of whom is the Presiding Justice. (Gov. Code, Â§ 69104.) Each justice has two staff attorneys and one judicial assistant assigned to work exclusively in his or her chambers. The court also has a Central Staff, consisting of a Managing Appellate Court Attorney, two Supervising Appellate Court Attorneys and a number of staff attorneys who work for each of the justices on a rotating basis. The court is also supported by a librarian, two systems administrators, a budget analyst, Central Staff judicial assistants, and a human resources specialist.

### **C. The Clerk's Office**

The Clerk's Office is made up of the Clerk Administrator, who oversees court operations for the entire District, an Assistant Clerk Administrator, a Supervising Deputy Clerk, a calendaring clerk, several "terminal digit deputies," an appellate court records assistant and a receptionist.

Each appeal or writ petition filed in Division One is assigned a six-digit identification number that is preceded by a "D" (e.g., D000000). Each terminal digit deputy is assigned two of the numbers from one to ten and is responsible for processing all filings in cases that end in either of those numbers. (For example, the terminal digit deputy that is assigned the numbers "1" and "2" is responsible for processing all filings in cases that have a number ending in a "1" or a "2".)

Thus, parties or practitioners seeking information or assistance in their cases should ask to speak with the appropriate terminal digit deputy, unless the case has been placed on a court calendar, in which case they should speak to the calendaring clerk.

### **D. Security**

The court has a security guard in the public area of the Clerk's Office. The California Highway Patrol, however, oversees and provides for the court's overall security needs.

## **II. THE WORK OF THE COURT**

### **A. Original Proceedings (Writs)**

Writs are reviewed and decided by a panel of three justices that rotates on a monthly basis. The Clerk's Office forwards all writ petitions to the Writ Department, which is staffed by Central Staff attorneys. The

Supervising Writ Attorney reviews each petition to determine its urgency. If an immediate stay or other form of urgent action appears to be necessary, a Writ Department attorney will orally present the petition to the writ panel; otherwise, petitions are generally processed in order of their filing, subject to adjustments for impending hearing or trial dates. Normally, a Writ Department attorney reviews the petition without waiting for a response, although one may be solicited; the attorney thereafter prepares a written memorandum evaluating the petition and circulates it to the writ panel.

After a writ petition is presented (whether orally or in writing), the justices on the writ panel may

1. request a response;
2. deny the petition (regardless of whether a response has been requested or filed);
3. issue a peremptory writ in the first instance without oral argument, but only after a response has been requested or filed and the parties have been notified by telephone, and in writing, of its possible issuance; or
4. issue an alternative writ or order to show cause.

It is the court's policy to request an initial response to a petition before issuing an alternative writ or order to show cause. If the panel issues an alternative writ or order to show cause, the real party in interest is given an opportunity to file a formal response and the cause will be placed on calendar. Generally, the Writ Department attorney who presented the petition to the writ panel assists the lead justice in drafting the opinion when the court issues a peremptory writ in the first instance. When the panel has issued an alternative writ or an order to show cause, the matter is assigned to the lead justice's chambers for the drafting of the opinion.

## **B. Appeals**

### **1. Case Screening**

In civil cases, the California Rules of Court require an appellant to file a Civil Case Information Statement (Cal. Rules of Court, rule 8.100(g)), which is reviewed by a Central Staff attorney to determine if there is any issue regarding the timeliness of the appeal or the appealability of the challenged judgment or order, whether the case is entitled to calendar priority, whether there has been a previous writ or appeal in the same case or in a closely related case, and whether the appeal is affected by a pending bankruptcy. It is the court's practice to grant priority on its own motion to matters involving child custody or visitation.

In all appeals, after the respondent's brief is filed or the time for filing such a brief has run in a case, the Managing Attorney or a designated Central Staff attorney screens the case and estimates the amount of time that the preparation of a draft opinion is likely to take.

Criminal appeals involving issues that can be resolved with little difficulty based upon well-established law and that do not present a likelihood of dispute as to how the law applies to the facts are designated as "by the court" ("BC") cases. In criminal appeals in which the appellant's counsel is unable to discern any reasonably arguable issues to raise, the court must independently review the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436 and are, accordingly, designated as "*Wende*" appeals.

All other appeals are assigned a value from three (for appeals that require a relatively short amount of time) through eight (for appeals that are likely to require a substantial amount of time). These assigned "weights" are used in assigning cases to chambers and to Central Staff, to balance workloads throughout the court.

### **2. Case Assignment/Processing**

BCs, *Wendes*, juvenile dependency cases and cases weighted as "8"s are generally assigned for processing on a first-in, first-out basis and are assigned randomly, in rotation, to a lead justice, who supervises the preparation of a draft opinion. Central Staff attorneys ordinarily assist in the preparation of draft opinions in such cases, although those cases may be assigned to a justice's chambers as necessary to meet the needs of the court.

All other types of appeals are usually assigned to a lead justice's chambers. Absent unusual circumstances, these assignments are made on a random basis to the justices. The assignment calendar for chambers cases is issued approximately three months ahead of time, with each chambers usually assigned the responsibility for processing six appeals per month. The internal procedures for assigning cases to chambers attorneys and for preparing draft opinions varies from one justice's chambers to another.

### 3. Oral Argument

Once a draft opinion has been prepared in a particular case, its path is determined by whether a party or parties have requested oral argument. In cases where oral argument is waived, the draft opinion is circulated in order of seniority to the other justices assigned to the panel for that case, for their review.

In cases where oral argument is requested, the draft opinion is placed in a calendar book. Each justice receives a copy of the calendar book containing the draft opinions for those cases on which he or she is participating. The justices review all cases in which they are to participate in advance of oral argument and confer on all cases argued immediately after argument takes place.

Oral argument is generally held during the second full week of the month, although occasionally cases are calendared for argument at other times, if necessitated by urgency or other good cause. Argument is limited to 15 minutes per side, unless the court grants a party's advanced written request for more time.

### 4. Submission of Cases

Cases that are orally argued are normally submitted at the conclusion of argument. Where oral argument is waived, the case is submitted at the conclusion of the argument calendar for the month to which it is assigned. Submission of the case triggers the 90-day rule for the filing of the opinion. (Cal. Const., art. VI, Â§ 19.)

## C. Motions

Routine applications and motions (see Cal. Rules of Court, rule 8.50) are reviewed by a Central Staff attorney and ruled on by the Presiding or Acting Presiding Justice. Other applications or motions, such as motions to dismiss an appeal, are ruled on by a panel of three justices. Requests for extensions of time to file briefs or other papers are ruled on immediately. Motions in writ proceedings are not held for opposition absent a request by the parties.

## III. SETTLEMENT CONFERENCES

### A. Litigant-Initiated Conferences

The general information packet sent to parties at the commencement of the appeal includes guidelines for the settlement program and an appellate settlement request form. The program is voluntary and available at the request of both parties or, should there be more than two parties, at the request of any two opposing parties. The request for a settlement conference may be made as soon as the notice of appeal

is filed and settlement proceedings may commence before briefing but, in any event, the request must be received no later than 30 days after the filing of the last brief. The request normally does not affect or extend the normal briefing schedule. In selecting the justice to participate in the settlement conference, the Presiding Justice considers any request by the parties for a particular justice. If settlement efforts prove unsuccessful, the settlement justice recuses from hearing the appeal in the case and all settlement papers are maintained as strictly confidential, kept separate from the appellate record and not considered by the attorneys or justices assigned to work on the appeal.

## **B. Court-Initiated Conferences**

From time to time the court has a court-initiated settlement program, which is a joint effort with the superior court to resolve civil appeals without the time delay and additional costs associated with the traditional appellate process. The court selects cases suitable for possible settlement from a review of the Civil Case Information Statements. The court sends a questionnaire to all counsel in the selected cases to get additional information as to possible issues on appeal. After review, the settlement judge, a superior court judge sitting on assignment, conducts a conference call with all counsel to discuss the case further and to determine whether it would be beneficial to schedule a settlement conference with counsel and the parties. The court attempts to schedule settlement conferences after the record has been filed but before briefing has begun and, if needed, counsel may be asked to provide limited briefing. If settlement appears to be possible, a conference is set for the earliest mutually convenient time. Additional conferences, if needed, are set after the first conference. All documents filed for the settlement proceedings are kept separate from the pending appeal and the settlement judge does not participate in any related panel discussions or decisions. No record is made unless the case settles.

## **IV. EXTERN PROGRAM**

The court has an extern program for select law school students three times a year (fall, spring and summer sessions). Each justice who participates in the program selects the extern or externs who will work for him or her, usually for 20 to 40 hours per week during the session. A Central Staff attorney supervises the program, which includes a general orientation about the court and its work, a series of substantive and procedural law lectures, and monthly group meetings. Students who participate in the extern program as part of their school's extern/clinic program may earn course credit for their work at the court.